

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Santosh Prakash	Team: Squad #10	CCRB Case #: 201504713	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 06/05/2015 1:45 PM	Location of Incident: Classon Avenue and Fulton Street	Precinct: 79	18 Mo. SOL 12/5/2016	EO SOL 12/5/2016	
Date/Time CV Reported Sun, 06/07/2015 12:00 AM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Mon, 06/08/2015 11:17 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DTS David Small	05763	926133	079 PCT
2. POM Adrian Camposjohnson	11747	956775	079 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Racquel Whiteman	12236	957284	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.DTS David Small	Abuse: Det. David Small stopped § 87(2)(b)	
B.DTS David Small	Abuse: Det. David Small frisked § 87(2)(b)	
C.DTS David Small	Abuse: Det. David Small searched § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

On June 5, 2015, at approximately 1:40 p.m., § 87(2)(b) exited the subway station, at Franklin Avenue and Fulton Street in Brooklyn and walked to the bus stop at the intersection of Classon Avenue and Fulton Street. While waiting for the bus, three uniformed police officers – Detective David Small, PO Adrian Campos-Johnson, and PO Raquel Whiteman – approached § 87(2)(b). Det. Small asked § 87(2)(b) if he had just been smoking a cigarette at the park across the street, identified as Crispus Attucks playground. § 87(2)(b) denied smoking a cigarette and having been inside the park. Det. Small asked § 87(2)(b) for identification, and then handcuffed § 87(2)(b) (**Allegation A**). Det. Small and PO Campos-Johnson then frisked and searched § 87(2)(b) (**Allegations B, C**). Det. Small issued § 87(2)(b) a summons for § 87(2)(b) and released § 87(2)(b) (See: § 87(2)(b)'s Statement and CCRB Complaint; Board Review – Summons). § 87(4-b), § 87(2)(g) The CCRB obtained video surveillance footage capturing the incident.

Mediation, Civil and Criminal Histories

§ 87(2)(b) rejected mediation. § 87(2)(b) has not filed a Notice of Claim in regards to this incident (See Board Review – FOIL Request Results). § 87(2)(b), § 87(2)(a) 160.50

Civilian and Officer CCRB Histories

This is § 87(2)(b) first CCRB complaint (See Board Review – Civilian History).

Det. Small has been a member of service for 15 years, and has been a subject in three previous CCRB complaints, none of which have been substantiated. § 87(2)(g)

PO Campos-Johnson has been a member of service for one year, and has not been a subject in any previous CCRB complaints.

Findings and Recommendations

Allegations Not Pleaded

Stop – A stop allegation is not being pleaded against PO Campos-Johnson and PO Whiteman, because Det. Small – the officers' supervisory training officer – directed the officers to approach § 87(2)(b) and made the decision to handcuff § 87(2)(b).

Frisk and Search – Frisk and search allegations are not being pleaded against PO Campos-Johnson, because at the time of the incident, PO Campos-Johnson – who only had one year of tenure at the NYPD— was working under the supervision of Det. Small.

Allegation A – Abuse of Authority – Stop: Det. David Small stopped § 87(2)(b)

It is not disputed that Det. Small stopped § 87(2)(b) because he believed that he saw § 87(2)(b) smoking inside Crispus Attucks playground which was across the street from where § 87(2)(b) was waiting for the bus. § 87(2)(g)

§ 87(2)(b) stated that while waiting at the bus stop he saw a marked police car drive past him and stop by the park’s main entrance on Fulton Street. Two officers exited the car, entered the park, and appeared to look for someone. As the officers were inside the park, § 87(2)(b) observed a male exit the park through its side entrance, located directly opposite the bus stop on Classon Avenue. This male walked across Classon Avenue, and entered the deli on the corner. Soon after the male entered the deli, Det. David Small, PO Racquel Whiteman and PO Adrian Campos-Johnson, approached § 87(2)(b). Det. Small asked § 87(2)(b) if he had been smoking in the park, and § 87(2)(b) told him no – that he had not left the bus stop. Det. Small then asked § 87(2)(b) for identification, which § 87(2)(b) provided. § 87(2)(b) noted that the video footage captures him handing over his ID to Det. Small (See: Board Review – § 87(2)(b)’s CCRB Statement; Video Surveillance Footage #6; Video Transcription). After providing his identification, § 87(2)(b) told the officers: “Listen, it wasn’t me, but you’re not going to search me on the street and violate my rights. If you are going to arrest me, go ahead, because I don’t want no problems.” Det. Small then handcuffed § 87(2)(b) (See Board Review – § 87(2)(b)’s CCRB Statement).

Det. Small stated that after receiving a complaint from a female civilian, about a disorderly black male inside the park, the officers drove down Classon Avenue by the park. The complainant described the disorderly individual as a tall black male. However, Det. Small did not recall if any further description was provided. When driving down Classon Avenue, Det. Small observed a male smoking inside the park, seated on a bench with his back to the officers. The male was wearing a baseball cap, and a jacket with lettering on the back (Det. Small referred to a “jacket,” but the investigation determined the outerwear was in fact a hooded sweatshirt). Det. Small could not recall any further details about the male. The officers turned left on Fulton Street, and parked their car near the intersection of Fulton Street and Classon Avenue. Upon parking their car, Det. Small saw the male walk towards a side entrance that Det. Small had assumed was chained

shut. When the male exited through the side entrance onto Classon Avenue, all three officers approached the male on Classon Avenue. Det. Small observed the male walk across Classon Avenue, from west to east, and stand at the south-east corner of the intersection at Classon Avenue and Fulton Street. Upon approaching § 87(2)(b) Det. Small told § 87(2)(b) that he had just seen him smoking inside the park. § 87(2)(b) denied this, and said that he had not entered the park, and had been standing at the bus stop. Det. Small advised § 87(2)(b) that he was going to issue him a summons for breaking park rules. § 87(2)(b) either refused to provide his identification or said he did not have it. § 87(2)(b) became “agitated,” with his voice beginning to rise. Because § 87(2)(b) could not provide identification, and because of his demeanor, Det. Small decided to handcuff him and place him under arrest for breaking park rules. Det. Small said that he never lost sight of § 87(2)(b) from the point he had first noticed § 87(2)(b) smoking in the park to when he stopped him. After approaching § 87(2)(b) Det. Small was able to clearly see that § 87(2)(b) was a tall black male, wearing a baseball cap, and a jacket with lettering on the back (See Det. Small’s CCRB Statement).

PO Campos-Johnson § 87(2)(g) initial observation of a male smoking in the park. After parking the car near the playground’s main entrance, PO Campos-Johnson observed the male stand up and walk to towards Classon Avenue, at which time PO Campos-Johnson realized there was another entrance to the park there. PO Campos-Johnson did not get a good look at the individual due to the distance between them. After exiting the car, PO Campos-Johnson saw Det. Small pointing at an individual standing on the street corner. Although he had lost sight of the male in the park, he now recognized the individual standing on the corner as the individual smoking in the park. PO Campos-Johnson corroborated that § 87(2)(b) denied smoking or being in the park, and refused to provide identification at which time PO Campos-Johnson handcuffed § 87(2)(b) (See PO Campos-Johnson’s CCRB Statement).

PO Whiteman stated that she never saw anyone smoking in the park. Upon exiting the police car, either Det. Small or PO Campos-Johnson told her they saw a male smoking inside the park. At one point, Det. Small and PO Campos-Johnson stated, “that’s the guy that was in the park,” all three officers then approached § 87(2)(b) who refused to provide identification (See PO Whiteman’s CCRB Statement).

The CCRB obtained video footage that documents the incident, revealing the following facts. At 1:32 p.m., § 87(2)(b) walks west on Fulton Street, turns left on Classon Avenue, and stands at the B48 bus stop on the south east corner of the intersection (See Board Review – Video Surveillance Footage #1, #2, Video Transcription). At 1:42 p.m., § 87(2)(b) briefly enters a deli, and exits after purchasing a cup of coffee, and continues standing at the bus stop. Footage from the store’s interior shows that § 87(2)(b) s

hooded sweatshirt did not have any print or lettering on the back (See Board Review – Video Surveillance Footage #3, Video-Still Image 1, Video Transcription).

At 1:45 p.m., while § 87(2)(b) continues to stand at the bus stop, a police car drives north on Classon Avenue and turns left on Fulton Street (See Board Review – Video Surveillance Footage #4, Video Transcription). At 1:47:12 p.m., while § 87(2)(b) is standing at the bus stop, an individual wearing a hooded sweatshirt and a bag-pack appears to cross Classon Avenue from the direction of the park, walks past § 87(2)(b) and enters the deli (See Board Review – Video Surveillance Footage #6, #8, Video-Still Image 2, Video Transcription). At 1:47:34 p.m., PO Campos-Johnson, PO Whiteman, and Det. Small approach the intersection walking east on Fulton Street. Upon reaching the intersection, PO Campos-Johnson turns right onto Classon Avenue, and Det. Small and PO Whiteman cross Classon Avenue, walking towards the south east corner of the intersection. Det. Small is seen pointing while crossing Classon Avenue (See Board Review – Video Surveillance Footage #4, #5, Video Transcription). At 1:48:17 p.m., all three officers approach § 87(2)(b) (See Board Review – Video Surveillance Footage #6, Video transcription). The officers appear to converse with § 87(2)(b) for approximately two minutes. At 1:49:04, § 87(2)(b) places his coffee cup on the ground, reaches into his back pocket with his right hand, and pulls an object out. § 87(2)(b) holds this object in his hand for some time. At 1:49:37, § 87(2)(b) appears to show this object to Det. Small, who appears to inspect it. 1:50:04 pm, Det. Small and PO Campos-Johnson handcuff § 87(2)(b) (See Board Review – Video Surveillance Footage #6, Video Transcription).

§ 87(2)(g)

§ 87(2)(b) The video footage supports § 87(2)(b) assertion that shortly before the officers approached him a man exited the side entrance of the park, walked by § 87(2)(b) and entered the deli. In the video footage, after entering the deli the male stands near the front counter for several minutes looking at a newspaper and appears to turn his head to look outside but does not purchase any items and leaves after several minutes. The back of the male's hooded sweatshirt is not visible due to the bag-pack on his back.

According to People v DeBour, 40 N.Y.2d 210, 215 (1976), “officers must have reasonable suspicion that a crime has occurred, is occurring, or is about to occur to stop an individual.” “The minimal intrusion of approaching to request information is permissible when there is some objective credible reason for that interference not necessarily indicative of criminality.” (*Id.*) “The next degree, the common-law right to inquire, is activated by a founded suspicion that criminal activity is afoot and permits a somewhat greater intrusion in that a policeman is entitled to interfere with a citizen to the extent necessary to gain explanatory information, but short of a forcible seizure.” (*Id.*, See Board Review – People v DeBour, 40 N.Y.2d 210, 215 (1976)). “Vague descriptions

or generic descriptions of a suspect which could apply to numerous individuals cannot form the basis of reasonable suspicion.” People v. Ransom, 46 Misc.3d 1224 (A) (Bronx Cty. 2015) (See Board Review People v. Ransom, 46 Misc.3d 1224 (A) (Bronx Cty. 2015)).

§ 87(2)(g)

[REDACTED]

[REDACTED]

Allegation B – Abuse of Authority – Frisk: Det. David Small frisked § 87(2)(b)

[REDACTED]

Although § 87(2)(b) alleged that only PO Campos-Johnson frisked him, both Det. Small and PO Campos-Johnson frisked § 87(2)(b) (See § 87(2)(b)'s Statement). The surveillance footage, between 1:50 pm and 1:52 pm, shows Det. Small and PO Campos-Johnson frisking § 87(2)(b). Det. Small and PO Campos-Johnson can be seen patting § 87(2)(b)'s hips, pant pockets, and pant legs.

Det. Small acknowledged frisking § 87(2)(b). After handcuffing § 87(2)(b), Det. Small intended to take § 87(2)(b) back to the stationhouse for further investigation, since he did not have identification, and was not being forthcoming about smoking in the park. Det. Small patted § 87(2)(b)'s front pant pockets down. Each time Det. Small felt an object in § 87(2)(b)'s pockets, he asked § 87(2)(b) what the object was. When Det. Small patted § 87(2)(b)'s back pocket, § 87(2)(b) stated that the item inside that pocket was his wallet. Det. Small removed the wallet from § 87(2)(b)'s back pocket, inside which he found § 87(2)(b)'s identification. Prior to the frisk, Det. Small did not observe any bulges under § 87(2)(b)'s clothing, and did not observe anything that suggested § 87(2)(b) possessed any concealed weapons. While frisking § 87(2)(b), Det. Small did not feel any objects that appeared to be weapons. Det. Small frisked § 87(2)(b) for his safety, because § 87(2)(b)'s voice was becoming “agitated.” When asked

if he believed § 87(2)(b) had a weapon, Det. Small stated that “anything is possible.” (See Det. Small’s Statement).

Officers are permitted to stop a person when reasonable suspicion of criminality exists and may conduct a frisk when there is reasonable suspicion to believe that the person is armed People v. DeBour, 40 N.Y.2d 210, 215 (1976).

§ 87(2)(g)
[REDACTED]

[REDACTED]

[REDACTED]

Allegation C – Abuse of Authority – Search: Det. David Small searched § 87(2)(b)

[REDACTED]

It is not disputed that Det. Small searched § 87(2)(b)

The video surveillance footage, between 1:50 pm and 1:52 pm, documents that Det. Small searched § 87(2)(b)’s pockets. However, the poor video quality and the camera angle make it difficult to determine the nature and extent of this search. Between 1:50:24 pm and 1:50:34 pm, Det. Small searches pockets on § 87(2)(b)’s hooded sweatshirt. Between 1:50:36 pm and 1:51:18 pm, Det. Small appears to remove an unknown object from § 87(2)(b)’s person, and then hands this unknown object to someone directly in front of him – either § 87(2)(b) or PO Campos-Johnson. At 1:51:28 pm, it appears that Det. Small removes another unknown object from § 87(2)(b)’s person. Between 1:51:33 and 1:51:50, PO Campos-Johnson appears to make contact with § 87(2)(b)’s back pockets, but it is unclear exactly what is happening (See Board Review – Video Surveillance Footage #6, Video Transcription).

Det. Small acknowledged searching at least one of § 87(2)(b)'s pockets. Det. Small removed § 87(2)(b)'s wallet from a back pocket, and then removed his identification from the wallet. Det. Small did not remove any other objects from § 87(2)(b)'s pockets aside from the wallet and identification. PO Campos-Johnson stated that only Det. Small searched § 87(2)(b) removing § 87(2)(b)'s wallet, which held his identification, and some court documents from his pockets (See Det. Small's Statement).

The "search incident to arrest" doctrine applies only where an arrest has already occurred or, at the time of the search, the officer intends to make an arrest (See Board Review – People v. Reid, 24 N.Y.3d 615). "A search must be incident to an actual arrest, not just to probable cause that might have led to an arrest, but did not." (*Id.*) "A reasonable intrusion generally takes the form of a pat-down of the detained person's outer clothing to determine the existence of any weapons (See Board Review – People v. Robinson, 125 A.D.2d 259). Once that limited intrusion fails to reveal a weapon and the basis for the officer's fear for his safety has therefore abated, the search must stop." (*Id.*) Additionally, Robinson specifies that when "a visual observation or limited protective frisk of the detainee reveals a bulge, that bulge must look or feel like a weapon before the officer is entitled to subject the detainee to a more intrusive search." (*Id.*)

§ 87(2)(g)

[REDACTED]

[REDACTED]

§ 87(4-b), § 87(2)(g)

[REDACTED]

[REDACTED]

§ 87(2)(g), § 87(4-b)

Pod:

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date